

Council on Worker's Compensation  
Meeting Minutes  
Madison, Wisconsin  
June 16, 2003

Members present: Mr. Bagin, Mr. Beiriger, Ms. Connor, Mr. Gordon, Ms. Huntley-Cooper, Mr. Kent, Mr. Newby, Mr. Olson, Ms. Vetter, Mr. Welnak and Mr. Ladwig for Rep. Kreibich

Excused: Mr. Buchen

Staff present: Mr. Conway, Mr. O'Malley, Ms. Knutson, Mr. Krueger, and Mr. Shorey

1. **Call to Order.** Ms. Huntley-Cooper convened the meeting in accordance with Wisconsin's open meetings law.
2. **Minutes.** Mr. Bagin moved adoption of the minutes of the May 13, 2003 meeting; Mr. Welnak seconded the motion. The motion was unanimously approved.
3. **Correspondence:** Ms. Huntley-Cooper referred to Mr. O'Malley's handout on information on the qualifications and scope of practice of Advance Practice Nurse Prescribers and Physician Assistants in response to the correspondence and discussion at the last meeting.

Ms. Janet Swandby, on behalf of the Association of Health Information Outsourcing Services, sent correspondence raising the issue of increasing the maximum charges for medical record copying in Wis. Stat. §102.13. In addition, Ms. Marilyn Toninato, on behalf of the Wisconsin Health Information Management Association, raised the issues of a proposed medical authorization form, charges for medical record copying and other management legislative proposals relating to release and copying of records. Mr. O'Malley confirmed that the department medical authorization is in final form following review and approval by attorneys, medical providers and the State Medical Society. Mr. Bagin indicated that the costs of copying medical records effect both labor and management. Hospitals and clinics are contracting with private firms to copy medical records. It has been 11 years since the Council has addressed this issue. Mr. Conway indicated that the Department of Health and Family Services (DH&FS) was addressing the issue of copying charges and setting a rate for those charges. The Division will keep the Council apprised of any action by DH&FS on this issue.

In a letter to the Council, Rep. Rob Kreibich raised an issue regarding premium categories for horse breeder farms. Mr. Bagin indicated that increased premium rates were due in part to increased benefit rates. The Wisconsin Compensation Rating Bureau (WCRB) should address this issue.

In a letter to the Council, Rep. Wayne Wood expressed concern over the length of time it takes for a hearing to be scheduled. He indicated that nine months or more was too long for employees to wait for their case to be heard. He proposed that the Council explore establishing a fund to provide money to employees while the application for hearing was pending. Employees would not be required to pay back the money drawn from this fund. Mr. Bagin clarified that 90 percent of all worker's compensation claims are paid. He suggested that contested cases be prioritized to provide expedited hearings in select cases. However, he emphasized that the parties must have sufficient time to prepare for hearing and that it may be difficult in some cases to be ready for hearing in 6 to 9 months. Mr. O'Malley clarified that the average time for a litigated case to be scheduled for hearing is 8.5 months overall, which varies by location. At times it is difficult for the Department to find a location to hold hearings. Regarding the loan program issue, Mr. Bagin expressed concerns regarding how the program would be funded and administered. Mr. Kent commented that the Department should make a diligent effort to set hearings in hardship cases. Mr. Bagin emphasized that only 10 percent of claims end up in litigation. Many times there is not medical support for the benefits claimed. Hearings are held in only 2 to 3 percent of cases; disputes are otherwise resolved in the balance of cases. The Department has made an effort to reduce the delay in scheduling hearings through special projects and the addition of two administrative law judges (as authorized by the Council).

**4. Report on information requested by the Council:** Mr. Shorey reported on data gathered on health cost fees. For a database to be certified, there must be at least 25 reported charges per CPT code per region. The current formula amount is 1.5 standard deviations above the mean, which equates to approximately the 93<sup>rd</sup> percentile of all billed charges per CPT code. The CPT code charges are grouped by zip code. Mr. Shorey provided the Council with data prepared by Glen Boyle from MCR and Liberty Mutual Insurance as well as mathematical percentages for standard deviations between 1.0 and 1.5.

**5. New Department Proposal:** Mr. O'Malley explained the Department's new proposal to amend Sec. 102.82(1) and Wis. Admin. Code §80.62(7)(a)3 regarding uninsured employers reimbursing the Uninsured Employer's Fund for claims expenditures. The Department's current policy is to include costs for administering claims in the total expenditures that must be repaid by uninsured employers. The Department's policy has recently been challenged. The proposed changes would codify the current policy and practice. Mr. Bagin commented that the carrier would have passed on this cost if the employer had been insured. Mr. Krueger explained that the costs for medical bill review resulted in net savings to the employer, yet the employer challenged the Department's authority to charge the cost of the bill review to the employer. The Council unanimously approved this proposal.

**6. Determination of Agreed Bill Content:** The Council broke into caucus (i.e. closed session) and later reconvened. Mr. Newby indicated that issues had arisen with regard

to including Advance Practice Nurse Prescribers (APNP) and Physician Assistants (PA) as providers under the Worker's Compensation Act and modifying the medical cost standard deviation formula. Ms. Alice O'Connor from the State Medical Society expressed concern regarding expansion of the scope of practice of these two groups. Mr. Newby indicated that it was not the Council's intention to address the issue of scope of practice of APNPs and PAs. Mr. Bagin suggested that APNPs and PAs could be granted the same status as dentists under the Worker's Compensation Act; that is, they are listed as providers for purposes of rendering treatment, but may not render opinions on disability. He further indicated that they bill the same CPT codes and are paid at the same rate as physicians. Mr. O'Malley had discussed the scope of practice issue with Wayne Austin, legal council for the Dept. of Regulation and Licensing. He indicated that the scope of practice for APNPs was not well-defined – they could provide any treatment within their training and the written collaborative agreement with a physician.

Ms. O'Connor urged the Council to further consider a reduction in reimbursement rates. She further suggested that pharmaceutical, durable medical equipment and hospital charges should also be scrutinized. Mr. Shorey confirmed that there was no database for pharmaceutical charges. Liberty Mutual Insurance has stated that a reduction is taken under usual and customary charge standards. Mr. Russell Leonard, Wisconsin Chiropractic Association, urged the Council to not reduce certified database reimbursement rates, but rather to concentrate on pharmaceutical and other charges. Mr. Bagin replied that Wisconsin has among the highest medical costs in the country and no regulation in comparison to other states. The goal is to reduce bills of those providers that are very high in comparison to the median charges of all providers.

**With regard to Department proposals, the Council discussed the following (numbers reflect the amendment number on the Department's summary sheet):**

6. Amend Wis. Stat. §102.31(3) Penalties. Mr. O'Malley explained that this proposal would include penalties for failure to respond to correspondence. Mr. Bagin commented that insurers and self-insured employers who do not respond to Department correspondence should be reported to the Office of Commissioner of Insurance (OCI). Mr. Bagin was concerned with the high rate of forfeiture rescissions. An audit may narrow the issue and identify the carriers/self-insured employers that repeatedly ignore Department directives.

9. Amend Wis. Stat. §102.35(1) Penalties. Mr. Bagin indicated that management would not agree to part (a) of the proposal. He suggested that the Department audit the system of generating rescissions. There are complaints by insurers that the Department states information has not been received while insurers state that the information is sent multiple times. Management agrees to part (b) of the proposal.

12. Amend Wis. Admin. Code §80.02(2)(h) Reporting Requirements. Mr. Bagin agreed with the Department's amended language so long as there is not a requirement for mandatory payment of benefits regardless of the outcome of the investigation and

that once the first payment is made, there is not a requirement to continue making payments. The Department amended the language to require the insurer/self-insured employer to notify the employee of the specific reason for denial of the claim. Mr. Newby stated that labor had concerns regarding the language of this proposal and that labor and management had not yet reached an agreement. The Council agreed to hold the discussion on this proposal until the next meeting.

The Council confirmed approval of the WCRB proposal to allow electronic submission of policy cancellations by insurers.

**The following Labor proposals were discussed:** Mr. Newby indicated that the Council should consider raising supplemental benefit rates. Mr. Shorey provided a financial status report on the Work Injury Supplemental Benefit Fund. Within six to seven years there will need to be an adjustment to payments into the fund as there is a slow decline in the fund's balance. There was no increase in funding in the last agreed bill when the benefit rates were changed to include dates of injury up to 1978. Mr. O'Malley explained that benefit payments for barred claims including occupational hearing loss, occupational diseases and certain traumatic injuries (where the statute of limitations has run for medical payments) are paid from the Fund. Ms. Knutson indicated that staff at the Department of Justice are concerned recent claims for artificial knee and hip replacements will have a large impact on the Fund. Mr. Shorey stated that the Fund would not face any solvency issues for several years. Mr. O'Malley clarified that under Wis. Stat. §102.65(3), the Fund cannot have a balance of more than 3 times the amount of benefits paid or payments into the Fund are proportionately reduced. Mr. Newby inquired whether the Fund would need additional revenue sources if supplemental benefit payments were increased. Mr. Shorey clarified that the Fund would need additional revenue before the year 2007 if payments from the Fund were increased. He suggested that if payments for pre-existing disabilities under Wis. Stat. §102.59 were eliminated, the money saved could be re-allocated to other benefit expenditures. However, there would still be claims paid from the Fund for a number of years following the elimination of new claims. Mr. O'Malley clarified that the last payment increase into the Fund was in 1985 when the death benefit payment (when there are no dependents) was increased from 80 to 100%. In 1985 the Fund had insolvency issues and at that time payments from the Fund were tightened and assessments were increased. Mr. Bagin commented that pre-existing disability benefit payments were enacted as an incentive to employers to hire people with disabilities.

Mr. Newby indicated that the Council should consider establishing a low interest loan program for injured workers whose cases are pending in litigation. The money would be used to continue health insurance premium payments. The alternative is to require employers to continue fringe benefits while the employee is receiving worker's compensation benefits. Mr. Bagin indicated that the loans would be unsecured and difficult to collect. The funding source for a low interest loan program has yet to be determined. He suggested that employees negotiate with employers for continuation of

health insurance while an employee is receiving worker's compensation benefits. Further, the Department can schedule expedited hearings in appropriate cases. Mr. Kent suggested that the Council study the possibility of offering a low interest loan program.

Mr. Newby indicated that bad faith penalties should be increased from a maximum of \$15,000 to \$50,000. Mr. Bagin questioned how many claims were paid at the maximum rate. Mr. O'Malley explained that the Department currently does not have that data available; that many claims are negotiated or paid. Mr. Newby requested that the Department gather data on this issue.

Mr. Newby suggested that the Department brochure for injured workers contain a statement that makes it clear that an employee has the right to refuse to allow the presence of a rehabilitation nurse (hired by the insurer or self-insured employer) in the room during a medical examination. The Council agreed to suggest some language to the Department.

Mr. Newby suggested that the Council consider the date of injury issue raised by the individual who testified last fall at the public hearing. Mr. Bagin stated that the individual requested a cost of living increase in disability benefits because she had an old injury date. The date of injury in some occupational injury cases is unclear; there may be two or more potential dates.

Mr. Newby suggested that the Council consider extending temporary total disability benefits until an employee is accepted into a retraining program. Mr. Bagin responded that the Council, in that event, would need to revisit the entire vocational rehabilitation system. Attorney David Weir and Attorney Dennis Wicht raised the issue of ordering payment of disability benefits paid prospectively when medical treatment expenses are ordered to be paid prospectively. Mr. Bagin indicated that it was the Council's intent that the employee receives temporary total disability benefits if surgery was found necessary by the Department.

**Management proposals discussed:** Mr. Bagin requested that the Department gather further information concerning medical costs and including prosthetic devices, pharmaceuticals and hospital charges in a fee database. The same standard deviation could then be applied to all of those billings in addition to the existing databases. The inclusion of billings for APNPs and PAs could also be included in the study. Management has concerns regarding paying the same rate for services for APNPs and PAs as for physicians. Management is seeking an agreement to lower the standard deviation formula for medical payments from 1.5 to 1.3 or 1.2. If there is agreement on that issue, then perhaps management would agree to increasing assessments into the Work Injury Supplemental Benefit Fund to pay for increased supplemental benefits. The Department is requested to provide data on changes in death and dismemberment assessments for other states. Mr. Gordon indicated that Minnesota and other states use the average wholesale price plus a percentage increase for pharmaceutical

charges. Further, for physician charges, most states are at a 80-84% reimbursement rate, which is approximately a 1.3 standard deviation from the mean.

**7. Adjournment:** Discussion on all agenda items concluded and the meeting was adjourned. The next meeting date is July 11, 2003 at 9:00 a.m. The goal is to complete action on all proposals. The meeting will start with a caucus.

NOTE: The next meeting date has been changed to July 28, 2003.